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1 no idea.
2 Q Why did you ask him what he was
3 doing?
4 A Because I thought it was unusual
5 for a vehicle to be parked in that location at that
6 time of evening with the hatchback open and
7 somebody standing at the rear of it.
8 Q Were you suspicious that Mr.
9 Bottari was about to commit a criminal act?
10 A I don't know what he was about to
11 do.
12 Q When you first saw Mr. Bottari, can
13 you tell the court what the position of his hands
14 were with respect to his body and/or his pockets?
15 A He was closing the hatch of his
16 trunk of his vehicle. (indicating)
17 Q Do you remember what color his
18 jacket was?
19 A No, I think it was a dark colored
20 jacket. I'm not a hundred percent sure.
21 Q At any point during this entire
22 encounter, were there other people around the area
23 other than yourself or Sergeant Fisher and Mr.
24 Bottari?
25 A To my knowledge, no.

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1 rear, correct?
2 A correct.
3 Q Isn't it a fact that where he was
4 parked actually is a lined parking lot within the
5 C.V.S. parking area?
6 THE COURT: Striped lines?
7 MR. D'AGOSTINO: Yes, striped line.
8 A Yes, they're striped at an angle, a
9 degree of an angle.
10 Q He was parked within the lines,
11 correct?
12 A No.
13 Q Was he parked in some way skewed?
14 A Yes, well the lines-- again I don't
15 know what degree the lines are because when you
16 enter the parking lot you are traveling in a
17 northerly direction. It's a one-way and the
18 parking spaces are angled accordingly, so he was
19 parked directly in line or it's perpendicular or
20 whatever, straight to the doors, so it's impossible
21 for him to be directly in one line. (indicating)
22 THE COURT: He was parked straight
23 to the doors? In other words, facing the
24 back wall, that is straight?
25 A Yes, his vehicle was not on an

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3 doing?
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22 encounter, were there other people around the area
23 other than yourself or Sergeant Fisher and Mr.
24 Bottari?
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1 Were there any other vehicles other
2 than your patrol car, Sergeant Fisher's patrol car
3 and Mr. Bottari's car in that parking lot at any
4 time throughout the entire encounter?
5 A No, not that I'm aware of.
6 Q Do you know if there were any other
7 witnesses to anything that occurred in that parking
8 lot in that evening?
9 A No.
10 Q Has anybody since reported to you
11 as being a witness?
12 A No.
13 Q At the moment that Mr. Bottari
14 closed his hatchback, were you actually observing
15 him?
16 A Yes.
17 Q You saw him close his hatchback,
18 correct?
19 A correct.
20 Q Were you still in your patrol car
21 at that time?
22 A Yes, I was still driving towards
23 him.
24 Q You mentioned that his hatchback
25 was parked as if he backed in towards C.V.S. at his

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1 You saw him put his hands in his pockets and then
2 you asked him to remove his hands?
3 A I don't know if I recall seeing him
4 putting his hands in his pockets. I remember
5 seeing his hands in his pockets and I asked him to
6 remove them.
7 Q What was his response?
8 A His response was, 'I'm not taking my
9 hands out of my pockets.'
10 Q How much time passed before you
11 asked him again?
12 A Immediately.
13 Q What did you say?
14 A I said I need you to please take
15 your hands out of your pockets.
16 Q What did he say?
17 A I'm not taking them out of my
18 pockets, I'm not doing anything you ask me to do.
19 Q When was the next time you asked
20 him to take his hands out of his pockets?
21 A Immediately again, I said, 'I'm
22 asking you, please to take your hands out of your
23 pockets.'
24 Q How far away from you was Mr.
25 Bottari the third time you asked him to take his

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1 A No.
2 Q Did Sergeant Fisher, to your
3 knowledge, have his flashlight with him?
4 A I don't recall.
5 Q At any time, did you enhance the
6 lighting in the viewing of Mr. Bottari by shining a
7 flashlight on him, either yourself or Sergeant
8 Fisher, to your knowledge?
9 A Not that I recall. I may have,
10 again, I may have used a spotlight but I don't
11 recall to enhance the lighting. I don't recall.
12 Q From the time Mr. Bottari closed
13 the hatchback, how much time would you say passed
14 until he put his hands into his pockets?
15 A Less than 30 seconds.
16 Q Can you describe his movements from
17 the time he closed the hatchback?
18 A Yes, as I stated before, after he
19 closed the hatchback he began to walk away from the
20 corner of his vehicle and he was walking away from
21 his vehicle as if he knew that he was-- obviously
22 he observed me driving up and, like, he was going
23 to engage me in a conversation. He was walking
24 towards me. (Indicating)
25 Q It's your testimony he was actually

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1 hands out of his pockets?
2 A He was probably, again, 5 feet on
3 the other side of my patrol vehicle and I was
4 standing at my patrol vehicle. So, 5 feet plus
5 whatever the width of the vehicle is, you know, 8
6 to 10 feet, maybe. (Indicating)
7 Q How much time passed from the third
8 time you asked him to take his hands out of his
9 pocket and the fourth time?
10 A A second or two.
11 Q What did you say?
12 A I asked him again, could you please
13 take your hands out of your pockets? I need you to
14 take your hands out of your pocket, he said, I am not
15 taking my hands out of my pockets, I am not doing
16 anything you ask me to do.
17 Q At this time, were you walking
18 towards Mr. Bottari?
19 A No.
20 Q Was he walking towards you?
21 A We were both stationary.
22 Q Was he looking at you?
23 A Yes.
24 Q Were you looking at him?
25 A Yes.

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1 walking in a southerly direction?
2 A I would say more of a, like,
3 southwest direction. (Indicating)
4 Q Where was your vehicle at that
5 point? Was it moving or was it stationed?
6 A He was walking and I was moving and
7 we ultimately came to a stop.
8 Q How far away was the front of your
9 car to the rear of his?
10 A From the rear of his, a car length.
11 Q Was he walking with his hands in
12 his pocket or hands out of his pocket?
13 A I don't recall at that point.
14 Q Did you notice any bulges in his
15 pockets at that time?
16 A No.
17 Q When did you next see him put his
18 hands in his pockets?
19 A When I got out of my vehicle and I
20 went to talk to him is when I remember seeing his
21 hands in his pockets.
22 Q When is the first time that you
23 asked him to take his hands out of his pockets?
24 A When I was outside of my vehicle.
25 Q You are out of your vehicle, and

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1 Mr. Bottari allegedly pushing Sergeant Fisher, did
2 you have reason to believe that he was committing
3 any criminal act, is that true?
4 A True.
5 Q Did Sergeant Fisher, at any time,
6 witness you asking Mr. Bottari to take his hands
7 out of his pockets?
8 A Yes.
9 Q You mentioned you asked him
10 approximately 6 times, maybe 8 or 9 or maybe more,
11 correct?
12 A Correct.
13 Q How many times had you asked Mr.
14 Bottari to take his hands out of his pockets before
15 Sergeant Fisher arrived?
16 A I do not know.
17 Q How many times did you ask Mr.
18 Bottari to take his hands out of his pocket after
19 Sergeant Fisher arrived?
20 A I do not know.
21 Q You mentioned that there was a
22 point when Sergeant Fisher basically tried to
23 reason with the defendant and stated to him,
24 something to do with the fact that he is a lawyer
25 and for your safety, that Mr. Bottari should take

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1 his hands out of his pockets, correct?
2 A Correct.
3 Q What was Mr. Bottari's response to
4 that?
5 A His response was fine, you want me
6 to take my hands out of my pockets, I'll take my
7 hands out of my pockets. And that's when he lunged
8 out with his hands out of his pockets.
9 (indicating)
10 Q You mentioned that there was a
11 black object and silver or gold object?
12 A Correct.
13 Q There was a black object in one
14 hand?
15 A Yes.
16 Q And there was a silver or gold
17 object in the other?
18 A Correct.
19 Q Have you ever ultimately
20 ascertained what those objects were?
21 A Yes.
22 Q What was the black object?
23 A His wallet.
24 Q Can you describe it for the court?
25 A It was a black wallet.

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1 Q How much time passed between the
2 fourth time you asked him to take his hands out of
3 his pockets and the fifth time?
4 A Again, it was seconds. I mean like
5 I said, I probably asked him a total anywhere from
6 6 to 8 times maybe more and each time there was
7 only a second or two between each time I asked him.
8 Q Did you ever raise your voice at
9 any time?
10 A No.
11 Q Did Mr. Bottari ever raise his
12 voice to you?
13 A Yes.
14 Q When did Mr. Bottari raise his
15 voice to you?
16 A He first raised it after I
17 initially asked him to remove his hands and then he
18 kept getting more and more agitated every time I
19 asked him to take his hands out of his pockets.
20 Q When, did in all of this, did you
21 actually radio for Sergeant Fisher to come?
22 A I radioed for another patrol unit
23 to come before I exited the vehicle.
24 Q Is that while you were traveling in
25 a northerly direction along--

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1 A No.
2 Q What direction was your vehicle
3 traveling at the time you radioed for backup?
4 A My vehicle wasn't traveling, it was
5 stopped.
6 Q You stopped the vehicle?
7 A I stopped the vehicle and engaged
8 Mr. Bottari in a conversation. I said, how are you
9 doing tonight, he said fine. I said what are you
10 doing and then, as I stated before, we went through
11 the whole thing when he said I am not going to tell
12 you my name I'm-- he said-- at that point I put the
13 car in park and I asked for another unit and I
14 exited the vehicle.
15 Q Was Mr. Bottari moving at the time
16 you were radioing for your backup?
17 A I believe he was stepping back from
18 the vehicle, from the police vehicle.
19 Q At that time, were you planning on
20 arresting Mr. Bottari for anything?
21 A No.
22 Q When did your decision to arrest
23 Mr. Bottari come into play?
24 A When he pushed Sergeant Fisher.
25 Q Let's backup. At no time prior to

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1 THE PEOPLE: Your Honor, can I
2 object during the course of this
3 proceeding--
4 THE COURT: No.
5 THE PEOPLE: What does this have to
6 do with voluntary statements? If Mr.
7 D'Agostino can explain that to me--
8 THE COURT: I'll explain it to you.
9 The officer testified that the defendant,
10 at some point in time, removed his hands
11 from his pockets and put his hands forward
12 while he had certain things in his hands.
13 Now, the question then is what the
14 officer's reaction or impression was at
15 that point and in order to better
16 understand whether the officer acted
17 properly or not properly at that point in
18 time and thereafter, it is helpful to
19 ascertain, if we can, what was in his
20 hands. What the black, what the silver or
21 gold objects were. Now, the officer has
22 identified them.
23 THE PEOPLE: Your Honor, with all
24 do respect, again--
25 THE COURT: Forget it, please sit

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1 down.
2 Q When, during the course of this
3 entire encounter, did you determine the exact
4 identity of those objects that were in Mr.
5 Bottari's hands?
6 THE PEOPLE: Objection, Your Honor.
7 THE COURT: Overruled.
8 A When he was placed in custody.
9 It was after he was placed in
10 custody?
11 A Yes.
12 At the time that you stated that
13 after he put his hands back into his pockets that
14 you feared for your safety, correct?
15 A Correct.
16 Was your fear based on your belief
17 that what he held in his hands could potentially
18 serve as a danger to you in some way?
19 A Yes.
20 What was your objective when you
21 first apprehended the defendant by grabbing one of
22 his hands?
23 A I'm sorry. Could you repeat that?
24 Q You mentioned on your direct case
25 that after Mr. Bottari put his hands back into his

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1 Q What was it made of, leather?
2 A I believe it was leather, I don't
3 recall exactly.
4 Q How thick was that wallet?
5 A I don't know, a standard wallet.
6 Q Would you say it was approximately
7 three inches wide by four inches in length?
8 A I don't recall.
9 Q Did you ever take that into police
10 evidence or custody?
11 A There may have been pictures taken
12 of it, I don't recall.
13 Q Is it right now in police custody,
14 to your knowledge?
15 A Not to my knowledge, no.
16 Q Did you ultimately identify the--
17 THE PEOPLE: Your Honor, I'm going
18 to have to object to the question of
19 relevance. This is a suppression hearing
20 not a--
21 THE COURT: I will allow it.
22 Q Did you ultimately determine
23 exactly what that object was?
24 A I believe it was a card case. I
25 don't remember exactly. I think it was a business

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1 card case or a business card holder.
2 Was it rectangular in shape?
3 A Yes.
4 Q Was it approximately a quarter of
5 an inch thick?
6 THE PEOPLE: Again, Your Honor,
7 objection. This is well beyond the scope
8 of this hearing.
9 THE COURT: Overruled.
10 Q Was it approximately two and a half
11 inches in length?
12 A I don't recall.
13 Q Officer, when you say a card, are
14 you referring to a standard business card?
15 (indicating)
16 A It was bigger than a standard
17 business card.
18 Q Just slightly big enough to contain
19 cards?
20 A I don't recall.
21 Q Do you have that object in court
22 with you today?
23 A No.
24 Q When exactly did you identify what
25 that object was?

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1 A No.
2 Q Was it your intention specifically
3 just to hold Mr. Bottari's forearm for an
4 indefinite period of time?
5 A No. As I stated before, Sergeant
6 Fisher instructed Mr. Bottari to remove his hands
7 from his pockets and knock him out of his pockets
8 without anything in his hands.
9 Q But at the time that's not why you
10 were holding his arm. Is it your testimony that
11 while you were holding Mr. Bottari's arm he was
12 instructing you not to take his hands out of his
13 pockets?
14 A No. If I'm not being clear I had
15 control of his one arm, Sergeant Fisher had control
16 of his other arm.
17 Q Were you in a standard position at
18 that point?
19 A Correct.
20 THE COURT: At that point you had
21 control of one of his arms and Sergeant
22 Fisher had control of the other?
23 A Correct. Sergeant Fisher
24 instructed him, slowly remove your hands out of
25 your pockets and do not come out of them with

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1 anything in your hands.
2 Q That is while you had control of
3 one of his arms and he had control of the other?
4 A Correct.
5 Q You were telling him to take his
6 hands out of his pockets?
7 A Correct.
8 Did he respond to that request?
9 A Yes.
10 He took his hands out of his
11 pockets?
12 A No, he pulled away from Sergeant
13 Fisher and removed his hands out of his pocket and
14 pushed Sergeant Fisher.
15 Q It's your testimony that he was
16 able to break free from Sergeant Fisher, correct?
17 A Correct.
18 Q Were you able to see how Sergeant
19 Fisher was actually holding his arm at that time?
20 I believe, from what I recall, he
21 had a grasp around his forearm. (indicating)
22 Q With one hand or two?
23 A I don't recall.
24 Q At that time, did you continue to
25 hold the defendant's arm?

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1 pockets, that you apprehended him by grabbing one
2 of his hands?
3 A I don't want to say apprehended
4 him. I secured his arm so whatever he did have in
5 his pocket, which at this point was still unknown
6 to me, that he could not remove his hand from his
7 pocket and either harm himself or me or Sergeant
8 Fisher, with whatever he had.
9 Q When you had his hand at that
10 point, did he still have something in his hands?
11 A I don't know, he still had his
12 hands in pocket, I couldn't tell.
13 Q Were you able to remove his hands
14 from his pocket?
15 A No, he was forcibly holding his
16 arms.
17 THE COURT: Are you grabbing his
18 hands at that point or his arm?
19 A I have his forearm.
20 THE COURT: His forearm because his
21 hands are in his pocket?
22 A Yes, just above his right and his
23 forearm. (indicating)
24 Q Sergeant Fisher had the other arm,
25 correct?

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1 Yes.
2 Q What were you trying to do at that
3 point?
4 A At that point I was trying-- we
5 were trying-- I can't speak for Sergeant Fisher,
6 but I was trying to secure his hand and have him
7 remove his hand from his pocket so we could
8 determine what he had, what he was in possession
9 of.
10 Q When you first grabbed his hand,
11 what were you physically doing to his hand or to
12 his forearm?
13 A I was holding it, to secure it.
14 Q What was Sergeant Fisher doing, to
15 your knowledge?
16 A To my knowledge he was securing his
17 other arm so that he could, you know, whatever he
18 had in his possession he could not harm us with it,
19 or harm himself.
20 Q Were you attempting to put your
21 hand into Mr. Bottari's pocket to grab whatever was
22 in it?
23 A No.
24 Q Were you attempting to pull his
25 hand out of his pocket?

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1 A Correct.
2 Q Your control of the defendant's
3 arms preceded your belief that Mr. Bottari had
4 committed any criminal act?
5 A Again, I don't know what he had
6 done to that point. He may have committed a crime,
7 I don't know.
8 Q But your belief is that he had
9 committed a criminal act that began the moment he
10 pushed Sergeant Fisher?
11 THE COURT: Beg your pardon? Let's
12 define criminal act. I will define it.
13 An act, which is prohibited by the Penal
14 Law of the State of New York, whether it
15 is characterized as a crime or a Penal Law
16 violation. That is what I mean by that
17 and that's the definition and we shall
18 proceed.
19 So, when he says criminal act,
20 that's the meaning. Something that is
21 contradictory to the Penal Law.
22 Do you want to ask the question
23 again or have it read back?
24 MR. D'AGOSTINO: I think that's
25 fair.

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1 Q I would just like to know, based on
2 the Judge's definition of a criminal act, would
3 that in any way change your answer?
4 A What was my answer, again?
5 Q Specifically, that the first
6 criminal act that you preceded the defendant to
7 have committed?
8 A I don't know if he committed a
9 criminal act before that.
10 Q But it's your perception that I am
11 interested in, not necessarily what--
12 THE PEOPLE: Objection, Your Honor.
13 I think it has been asked and answered.
14 THE COURT: Well, he gave an answer
15 and now he seems to be saying he is not
16 sure; he doesn't know. So, I have to
17 allow that to be explained a little
18 further.
19 Q When you say you are not sure if he
20 committed an act, you mean you're not sure of
21 something that he did prior to you arriving there
22 that may have occurred?
23 A Correct.
24 Q But from everything that you saw,
25 the first thing that you saw Mr. Bottari do that

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1 A I continued to hold his arm, yes.
2 Q You continued to exercise control
3 over Mr. Bottari's arm at that time?
4 A I continued, yes. At that point I
5 didn't know what he had so I continued to hold him.
6 Did Mr. Bottari continue to have
7 the hand that you were holding, in his pocket?
8 A Yes.
9 Q Which arm did you physically
10 secure?
11 A I believe it was his left arm that
12 I came in control of.
13 Q Is it your testimony that Sergeant
14 Fisher secured his right arm?
15 A I believe so, yes.
16 Q Is it your testimony that Mr.
17 Bottari used his right arm to push Sergeant Fisher
18 with his, right arm while you held the left arm?
19 A Correct.
20 Q What happened to Sergeant Fisher at
21 the time that Mr. Bottari pushed him? Did he fall
22 to the ground?
23 A No, he just maybe stepped back, you
24 know, half a step and then went to regain control
25 of his arm and at that point I believe Mr.

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1 Q How did you try to regain control
2 of his arm the second time?
3 A Just try to get a hold of him.
4 Q How?
5 A Just trying to grab his arm.
6 Q Just talking about you
7 specifically, you were trying to simply grab his
8 left arm?
9 A Again, at that point I am trying to
10 gain control of one of his arms.
11 Q It's your testimony that the time
12 you fell, that the defendant had been in violation
13 of the Criminal Law was when he pushed Sergeant
14 Fisher, correct?
15 A Correct.
16 Q At no time prior thereto, correct?
17 A Yes.
18 Q At the time that Mr. Bottari first
19 pushed Sergeant Fisher was after both you and
20 Sergeant Fisher had control of his arms, correct?
21

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1 you felt was in some way criminal or in violation
2 of some Penal Statute was when he pushed Sergeant
3 Fisher, correct?
4 A Well, during my instruction to
5 remove his hands out of his pockets, you know,
6 again, I would have to go back and review the Penal
7 Law, I am asking him to remove his hands from his
8 pockets and he is ignoring my requests.
9 Q You felt that was a criminal act?
10 A It may have been. I would have to
11 go back and review the Penal Law.
12 Q But at the time of the occurrence,
13 did you believe that that was a criminal act? Was
14 he under arrest for that at any point?
15 A No, not at that point.
16 Q Let's go back to the point when you
17 stated that Mr. Bottari broke free from your hold
18 of his left arm, were you both standing at that
19 point?
20 THE PEOPLE: Your Honor, I think we
21 have been through this. What defense
22 counsel is getting at for purposes of
23 voluntary statement, which is what we are
24 here for. The purposes of these questions
25 is to elicit at what point the defendant

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1 know this is difficult. If you can imagine that
2 this is a movie I would like to take it
3 frame-by-frame. To the best of your ability I have
4 to know--
5 THE PEOPLE: I have to object, Your
6 Honor.
7 THE COURT: Overruled.
8 THE PEOPLE: This is not a trial.
9 THE COURT: I don't know, it's not
10 a movie and it's not frame-by-frame. We
11 will finish this within another two
12 moments.
13 A You are talking about a difference
14 or a time frame of maybe a second or two from the
15 time that he immediately pulls free from Sergeant
16 Fisher and pushes him, to the time that we both
17 begin to struggle for control of his arms and then
18 the three of us fall down.
19 Q Correct?
20 A Right.
21 Q What part of your body came into
22 contact with what part of Mr. Bottari's body next
23 after he broke free?
24 A I have no idea.
25 Q You don't remember?

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2 of some Penal Statute was when he pushed Sergeant
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22 counsel is getting at for purposes of
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1 was under arrest.
2 THE COURT: The last question fits
3 in, the other questions I see where they
4 fit in, where they are relevant. I'm not
5 sure about the last one, can we have it
6 read back?
7 (Whereupon, the last question
8 and answer was read back by the
9 reporter.)
10 MR. D'AGOSTINO: Can we go off the
11 record for a moment?
12 THE COURT: Sure.
13 Q After Mr. Bottari broke free from
14 your grasp, can you describe exactly what happened
15 next?
16 A I thought I did but, okay. I
17 attempted to grasp control of his arm.
18 Q How are you attempting to do that?
19 THE PEOPLE: Your Honor, he all
20 ready asked this question about three
21 times.
22 THE COURT: I am letting him cover
23 this.
24 THE PEOPLE: Your Honor, it's
25 already been covered, that's my point. He

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1 determine what had been in them?
 2 A Not until he was placed in custody,
 3 no.
 4 Q What part of Mr. Bottari's body
 5 came in touch with the ground?
 6 THE PEOPLE: Objection, Your Honor.
 7 How would he know that?
 8 THE COURT: Well, because he was
 9 there. If he doesn't know, he doesn't
 10 know.
 11 A I don't know.
 12 Q Did you see blood?
 13 A Yes.
 14 THE PEOPLE: Objection, this has
 15 nothing to do with this hearing. I don't
 16 know how many times I can emphasize. It
 17 has nothing to do with coercion, it has
 18 nothing to do with--
 19 THE COURT: I think we are up to
 20 that moment.
 21 Q When you immediately placed the
 22 defendant under arrest, what was the charge at that
 23 times? What were you arresting him for?
 24 THE COURT: You don't mean what was
 25 the charge because there was no form of

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1 charge, obviously.
 2 MR. D'AGOSTINO: I understand but I
 3 would like to know what was he arresting
 4 him for.
 5 Q What were you arresting him for?
 6 THE COURT: Give me the point in
 7 time.
 8 MR. D'AGOSTINO: When they placed
 9 Mr. Bottari under arrest.
 10 THE COURT: Let's go back. There
 11 is a time when you placed him under
 12 arrest. What action did you take to
 13 formalize the arrest? Did you say you are
 14 under arrest? Did you write a paper down?
 15 did somebody else write a paper down?
 16 A I advised Mr. Bottari that he was
 17 under arrest.
 18 THE COURT: Okay.
 19 Q What were you arresting him for?
 20 THE COURT: Did you advise him at
 21 that time, you said you are under arrest,
 22 did you say you are under arrest or did
 23 you say you are under arrest because of a,
 24 b, c, d, e?
 25 A I distinctly remember, you're under

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1 A I don't remember.
 2 Q What part of Sergeant Fisher's body
 3 came into contact with what part of Mr. Bottari's
 4 body?
 5 A I do not know.
 6 Q How did Mr. Bottari end up face
 7 first on the ground?
 8 A I don't know. As I said when we
 9 fell down to the ground, Sergeant Fisher was
 10 falling first. Mr. Bottari was falling with him
 11 and I was-- the three of us went down. From what I
 12 saw, Sergeant Fisher landed on his back or on his
 13 right shoulder and still trying to hold control of
 14 Mr. Bottari's other arm, or whatever arm he had,
 15 and the three of us fell to the ground.
 16 Q Did you have any control of Mr.
 17 Bottari's arm prior to falling to the ground?
 18 THE PEOPLE: Objection, Your Honor.
 19 What does this have to do with this
 20 hearing?
 21 THE COURT: We are still on the one
 22 point, we already ruled on that. I am not
 23 going to rule again. We are still on that
 24 moment he is trying to get it
 25 frame-by-frame. I don't like the

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1 expression of that but, basically.
 2 To the time that you were all on
 3 the ground, and from the time that you
 4 were all standing, in that moment, did you
 5 reach the ground all three of you reached
 6 the ground?
 7 A All three of us reached the ground.
 8 THE COURT: And in reaching, all
 9 three of you reaching the ground, were
 10 basically you and Sergeant Fisher both
 11 holding onto the defendant when you
 12 reached the ground?
 13 A From what I recall we all had a
 14 hold of each other.
 15 THE COURT: Okay.
 16 A I can't recall what area of Mr.
 17 Bottari's body I had a hand on, what area of my
 18 body he had a hand on. We were all holding on to
 19 one another and I was trying to gain control with
 20 one of his arms. Whether I had control, I don't
 21 know.
 22 Q Do you remember which one?
 23 A I don't remember which one.
 24 Q During this moment, did you at any
 25 time attempt to pat Mr. Bottari's pocket to

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1 arrest.
2 Q For what?
3 A I don't remember what specific
4 charges at that point in time for what I was
5 charging him with.
6 Q You did file a police report,
7 correct?
8 A Yes.
9 Q In that police report, you
10 indicated that you were arresting him for
11 obstructing governmental administration of justice
12 and disorderly conduct, is that right?
13 A That is correct.
14 Q My question is simply whatever word
15 you want to call it, when you had grabbed the
16 defendant and the defendant had fallen to the
17 ground, did that occur before you placed the
18 defendant under arrest or after you placed him
19 under arrest?
20 A It occurred before.
21 Q At any time prior to that time, did
22 you attempt to place Mr. Bottari under arrest?
23 A No.
24 Q So, the first time you attempted to
25 place him under arrest was after you had already

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1 to?
2 A Myself.
3 Q Who else was in the room at that
4 time?
5 A Nobody that I recall.
6 Q It was just you and the defendant
7 in the hospital room?
8 A That is correct.
9 Q He was still under arrest at that
10 time, correct?
11 A Correct.
12 Q You said he apologized to you?
13 A Yes.
14 Q What did he say exactly?
15 A I believe that he said he was sorry
16 and he said something to the effect that, I should
17 have answered your questions, I had a fight with my
18 wife this evening, I was just down in the parking
19 lot to sleep. I know he apologized numerous times.
20 Q Did you think that was important
21 information?
22 A Yes.
23 Q Did you write it down anywhere?
24 A I don't recall if I wrote it down.
25 I don't think I wrote it down.

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2 Q For what?
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4 charges at that point in time for what I was
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22 you attempt to place Mr. Bottari under arrest?
23 A No.
24 Q So, the first time you attempted to
25 place him under arrest was after you had already

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1 been involved in that physical struggle with Mr.
2 Bottari?
3 A No. I tried to place him under
4 arrest as soon as he pushed Sergeant Fisher.
5 Q With respect to the pushing of
6 Sergeant Fisher, what part of Mr. Bottari's hand
7 pushed what part of Sergeant Fisher?
8 A I thought I all ready answered
9 that.
10 Q Did he push him in the face; did he
11 push him in the hand; did he push him in the chest?
12 A Pushed him in the chest.
13 Q Did Sergeant Fisher go to Dobbs
14 Ferry Hospital with you?
15 A No.
16 Q Did any other police officers
17 accompany you at Dobbs Ferry Hospital?
18 A No.
19 Q Were you also injured during the
20 course of this incident?
21 A No.
22 Q Was Sergeant Fisher, to your
23 knowledge?
24 A No.
25 Q Did either yourself or Sergeant

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CERTIFICATION

Certified to be a true and accurate transcript of the aforesaid proceeding.

Jennifer A. Luongo

Jennifer A. Luongo

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MR. D'AGOSTINO: Your Honor, can I just have one minute to gather my thoughts?

THE COURT: Yes.

MR. D'AGOSTINO: Your Honor, with all do respect, I have no further questions. Thank you.

THE COURT: No redirect?

THE PEOPLE: No, Your Honor.

THE COURT: People rest.

THE PEOPLE: People rest.

THE COURT: You, of course, have the right to call your client as your witness.

MR. D'AGOSTINO: The defendant wishes not to be called at this time. I would like to submit, if possible, a motion, at a minimum, on a later date. I would like to submit some cases and some law, not at this time. I would like to just have a very brief opportunity to just

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do a post hearing memorandum and I request this court to reserve.

THE COURT: I am going to reserve.

THE PEOPLE: Your Honor, obviously I just ask if you want something in writing--

THE COURT: Did you want to wait for the transcript?

MR. D'AGOSTINO: Not necessarily. THE COURT: Because I'm not going to make a decision without the transcript. You might as well wait for the transcript. THE PEOPLE: Once he gets the transcript and he has a date in mind where he is going to file his memo of law, if you could just give me a call and we can pick a date and I will put something in writing as well.

THE COURT: I'm fine with that.

MR. D'AGOSTINO: Thank you.

THE PEOPLE: Thank you.

(Time noted: 9:40 p.m.)